



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

4/92

APR 9 1992

REPLY TO THE ATTENTION OF:

CS-3T

Joel Gross, Acting Assistant Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice, Room 1515
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044

Dear Joel:

As requested in our conference call of April 23, 1992, here is a brief summary of facts regarding the proposed settlement of Philipp Brothers and Federal Cartridge from the NL Industries Site.

I. Negotiation Background

1. May 1991, Philipp Brothers approaches EPA regarding a possible settlement for lead brokers.

2. June 1991, a draft consent decree is prepared by EPA and sent to DOJ. Four respondents were willing to settle for a total of \$1.7 million.

3. August 13, 1991, Steve Willey and Alan Held provide comments on the consent decree and request an administrative order format without release for penalties.

4. August 28, 1991, a revised settlement, now an administrative order at DOJ's request, is sent to DOJ by EPA.

5. September 24, 1991, the administrative order is sent to the Respondents.

6. Respondents request a release from section 106 and 107 liability.

7. November 1991, DOJ requests that respondents pay an additional premium to be relieved of Section 106 penalties and that EPA prepare a consent decree instead of an administrative order.

8. December 20, 1991, two of the four potential respondents agree to increase their payments. EPA sends DOJ a

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new settlement, now in Consent Decree form. The CD is now a \$1 million settlement.

9. April 23, 1992, DOJ provides verbal comments on the consent decree in conference call.

II. Facts Regarding Federal Cartridge

1. Federal Cartridge sent at least 8,443,687 pounds of materials to the Site. Those materials consisted of:

- Primary lead
- Corroding lead
- Common lead
- 5% shot mix
- Reverb lead.

2. Federal Cartridge had a tolling agreement with NL which required Federal to provide NL with lead which NL would then process and return to Federal as a finished product. This tolling agreement was renegotiated to recognize pollution control costs of lead and arsenic contained in lead shot. Note the application of U.S. v. Aceto Agricultural Chem. Corp., 872 F.2d 1373 (8th Cir. 1988), to this fact pattern.

3. NL claims that Federal Cartridge and other companies NL sent EPA data on are responsible for generating the hazardous materials at the Site.

III. Facts Regarding Philipp Brothers

1. Philipp Brothers sent at least 8,774,614 pounds of materials to the Site. These materials consisted of:

- Antimonial lead
- Corroding grade lead
- Corroding lead
- Lead metal
- Arsenical antimonial lead ingot
- Strapped lead
- Doe Run brand lead
- Antimonial metal
- Antimony
- 13% antimony lead ingots
- Tin
- Cadmium

2. NL claims that Philipp Brothers and the other companies NL sent EPA data on are responsible for generating the hazardous materials at the Site.

3. Philipp Brothers, in answer to our 104(e) request, takes the position that lead is neither a hazardous substance nor a hazardous waste. Regardless of any potential "product" arguments, lead is clearly a hazardous substance under the law. Philipp Brothers initiated these negotiations in May 1991, and has been cooperative throughout the process.

Please call me at FTS 353-1129 with any questions you may have. I hope we can send the respondents a DOJ approved settlement document as soon as possible. It is my belief that demonstrating to the court our willingness to settle with reasonable parties will assist us in our efforts in the main litigation.

Sincerely,


Steven Siegel
Assistant Regional Counsel

cc: Rodger Field
Lynn Peterson
Steve Willey
Lee Gelman
Kevin Holowinski
✓ Brad Bradley
Beverly Kush